

Deconstruction and Bio-politics: Asymmetrical Visuality, Spacing, Power

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Introduction

This chapter speculatively investigates the relationship between Jacques Derrida's metaphysical critique, deconstruction, and Michel Foucault's conception of the politics of life, bio-politics. Drawing on crucial recent works by Kalpana Rahita Seshadri ¹ and Kevin Attell ² which have posited strong connections between Derrida and 'the greatest contemporary divulgator of Foucault's biopolitical narrative', Giorgio Agamben, ³ the chapter then examines Foucault's original bio-political thinking – namely his work on Jeremy Bentham's 'Panopticon' – in an attempt to connect this to a lesser-known area of Derrida's deconstructive juridical thought.

This original and tentative connection will be attempted via an account of visuality which is uncannily similar in both Derrida's juridical thought and Foucault's account of bio-politics. Using the thought of Catherine Malabou it will be argued that this shared account acts as the

¹ Kalpana Rahita Seshadri, *HumAnimal: Race, Law, Language* (Minneapolis: University of Minnesota Press, 2012).

² Kevin Attell, *Giorgio Agamben: Beyond the Threshold of Deconstruction* (New York: Fordham University Press, 2015).

³ Timothy Campbell and Adam Sitze, eds., *Biopolitics: A Reader* (Durham and London: Duke University Press, 2013), 25. See also Giorgio Agamben, *Homo Sacer: Sovereign Power and Bare Life*, trans. Daniel Heller-Roazen (Stanford: Stanford University Press, 1998), 9, for Agamben's account of his *Homo Sacer* as an heir to Foucault's work on bio-politics: '[t]he Foucauldian thesis will then have to be corrected or, at least, completed'.

‘motor scheme’ for both theorists⁴ and consequently allows for Derrida and Foucault to conceptualise law and bio-politics respectively. Visuality is thus the ‘tool capable of garnering the greatest quantity of energy and information in the text of an epoch’⁵ and is an example of the way in which ‘[t]o think is always to schematize, to go from the concept to existence by bringing a transformed concept into existence’.⁶

The account of visuality in both the deconstructive and bio-political works stipulates that an asymmetrical and disproportionate power exchange is required for juridical and bio-political functions to occur. Those subjected to such functions are observed within a disproportionate field of vision from which they cannot escape, nor can they see those who watch them. Foucault describes this disproportionate visuality in relation to those administered by bio-political mechanisms: ‘He is seen, but he does not see; he is the object of information, never a subject in communication’.⁷ In turn Derrida calls this the ‘*visor effect*’ in which ‘we do not see the one who sees us’.⁸ Consequently the asymmetry within both accounts is evident.

The juridical and bio-political accounts then suggest a more intrinsic connection between deconstruction and bio-politics premised on Foucault’s concept of the ‘diagram’⁹ and Derrida’s concepts of *différance*¹⁰ and the ‘trace’.¹¹ It will be argued these concepts connect

⁴ Catherine Malabou, *Plasticity at the Dusk of Writing: Dialectic, Destruction, Deconstruction*, trans. Carolyn Shread (New York: Columbia University Press, 2010), 14. See generally 12–15.

⁵ *ibid.*, 14.

⁶ *ibid.*, 13.

⁷ Michel Foucault, *Discipline and Punish: The Birth of the Prison*, trans. Alan Sheridan (London: Penguin Books, 1991), 200.

⁸ Jacques Derrida, *Specters of Marx: The State of the Debt, the Work of Mourning and the New International*, trans. Peggy Kamuf (New York and London: Routledge Classics, 2006), 7.

⁹ Foucault, *Discipline and Punish*, 205.

¹⁰ See generally Jacques Derrida, “Différance”, trans. Alan Bass, in *Margins of Philosophy* (Chicago: The University of Chicago Press, 1982).

the conceptualisations of space, vision, and power found in deconstruction and bio-politics. Adapting Seshadri's phrase, the connection aims to illustrate 'the [juridico-]political valence of the trace' present in both deconstruction and bio-politics. ¹²

Deconstruction and Bio-politics

To begin a discussion on deconstruction and bio-politics let us briefly consider three recent and important engagements on this topic from Malabou, Seshadri, and Attell.

Malabou: Bio-politics as sovereignty's deconstruction

Malabou's essay 'Will Sovereignty Ever Be Deconstructed?' ¹³ asks if we have succeeded in Foucault's declaration that '[w]e need to cut off the king's head' in order to move away from sovereign-centred political theories. ¹⁴ She ponders whether 'after Foucault, after Derrida – and I add, after Agamben', we have successfully 'cut off the king's head?' ¹⁵ via the theorisation of bio-politics, those 'disciplines of the body' and the 'regulations of the population ... around which the organization of power over life was deployed'. ¹⁶ Here

¹¹ See J. Hillis Miller, "Trace", in *Reading Derrida's Of Grammatology*, eds. Sean Gaston and Ian Maclachlan (London and New York: Continuum, 2011), 47–51.

¹² Seshadri, *HumAnimal*, 109.

¹³ Catherine Malabou, "Will Sovereignty Ever Be Deconstructed?", in *Plastic Materialities: Politics, Legality, and Metamorphosis in the Work of Catherine Malabou*, eds. Brenna Bhandar and Jonathan Goldberg-Hiller (Durham and London: Duke University Press, 2015), 35–46.

¹⁴ Michel Foucault, "Truth and Power", trans. C. Lazzeri, in *Power: Essential Works of Michel Foucault 1954–1984: Volume Three*, ed. James D. Faubion (London: Penguin Books, 2002), 122.

¹⁵ Malabou, "Will Sovereignty Ever Be Deconstructed?", 36.

¹⁶ Michel Foucault, *The Will to Knowledge: The History of Sexuality, Vol. 1*, trans. Robert Hurley (London: Penguin Books, 1998), 139. See also Roberto Esposito, *Terms of the Political: Community, Immunity, Biopolitics*, trans. Rhiannon Noel Welch (New York: Fordham University Press, 2013), 69: 'biopolitics refers to the increasingly intense and direct involvement established between political dynamics and human life (understood in its strictly biological sense), beginning with a phase that we can call second modernity'.

Malabou is clear: ‘My answer, here, is no’.¹⁷ She disagrees that Foucault’s bio-politics are ‘absolutely incompatible with relations of sovereignty’,¹⁸ because bio-politics stands as *sovereignty’s own deconstruction of itself*: ‘biopolitics is already, in itself, a deconstructive tool of sovereignty’.¹⁹ Hence sovereignty remains, even if monarchical sovereignty wanes, because sovereignty deconstructs itself and reappears as an epistemic condition for bio-politics: ‘[i]t is only ... when biology is constituted as a science replacing natural history, that biopolitics becomes possible’.²⁰ Accordingly, Malabou diagnoses the problems of the past:

The problem is the following: for Foucault, as for Agamben or Derrida, even in different ways, biology is always presented as intimately linked with sovereignty in its traditional figure.²¹

Yet Malabou’s analysis lacks comment on the metaphysical connection between the *functioning* of deconstruction and bio-politics. However Seshadri’s and Attell’s work alleviate this lack.

Seshadri: Deconstruction as the site of the Bio-political

Seshadri’s exquisite monograph *HumAnimal: Race, Law, Language* thoroughly investigates the metaphysical relationship between the functioning of deconstruction and bio-politics. Her thesis argues that ‘what Derrida indicates as “trace” or the play of *différance*’ within

¹⁷ Malabou, “Will Sovereignty Ever Be Deconstructed?”, 36.

¹⁸ Michel Foucault, *Society Must Be Defended: Lectures at the Collège de France, 1975–76*, trans. David Macey and ed. Arnold I. Davidson (London: Penguin Books, 2004), 35.

¹⁹ *ibid.*, 37.

²⁰ *ibid.*, 38. See also Maria Muhle, “A Genealogy of Biopolitics: The Notion of Life in Canguilhem and Foucault”, in *The Government of Life: Foucault, Biopolitics, and Neoliberalism*, eds. Vanessa Lemm and Miguel Vatter (New York: Fordham University Press, 2014), 84: ‘The articulation of power that governs the living thus supposes a knowledge of the living. In the epistemic conjuncture in which biopolitics emerges, this knowledge is articulated by medicine and biology at the beginning of the nineteenth century...’.

²¹ Malabou, “Will Sovereignty Ever Be Deconstructed?”, 38.

deconstruction *is* ‘the site of the biopolitical’.²² Developed somewhat, Derrida’s deconstructive critique can be mapped onto, and account for, concepts which are necessary for the functioning of bio-politics. Thus deconstruction’s critique of metaphysical categories considered as ‘proper’, and of ‘self-presence and purity’, allows for bio-politics to operate.²³ With her focus on racism (something Foucault identified as being born out of bio-politics)²⁴ Seshadri illustrates how racism emerges from the bio-political separation of *bios* from *zōē*, as explicated in Agamben’s seminal work *Homo Sacer: Sovereign Power and Bare Life*.²⁵ The metaphysical explanation for this is that ‘biopower depends on a contamination, the trace, the *différance* between biological (natural) life and political (human) life, in order to produce the specter of bare life’.²⁶ Consequently racism *qua* bio-politics enters the world due to, and through, the deconstructive act which differs and defers biological life from political life.²⁷

Attell: Agambenian deconstruction and Bio-politics

Turning to Attell’s book *Giorgio Agamben: Beyond the Threshold of Deconstruction*, he too posits a profound connection between deconstruction and Agambenian bio-politics: ‘Derrida must be considered Agamben’s primary contemporary interlocutor’ because ‘Agamben views deconstruction as perhaps the most significant body of philosophical thought in the postwar period’.²⁸ Attell illustrates how Agamben’s thought, as perhaps the foremost on bio-politics,

²² Seshadri, *HumAnimal: Race, Law, Language*, xiii.

²³ *ibid.*

²⁴ Foucault, *Society Must Be Defended*, 258: ‘The juxtaposition of – or the way biopower functions through – the old sovereign power of life and death implies the workings, the introduction and activation, of racism. And it is, I think, here that we find the actual roots of racism’.

²⁵ Seshadri, *HumAnimal: Race, Law, Language*, 86. And see Agamben, *Homo Sacer*, 1–12.

²⁶ Seshadri, *HumAnimal: Race, Law, Language*, 86.

²⁷ But see Jacques Derrida, *The Beast & the Sovereign: Volume I*, trans. Geoffrey Bennington (Chicago and London: The University of Chicago Press, 2009), 326, for Derrida’s ‘dissatisfaction’ with Agamben’s ‘distinction between *bios* and *zōē*’. On this see also Seshadri, *HumAnimal: Race, Law, Language*, 86.

²⁸ Attell, *Giorgio Agamben*, 3.

is imbued with a scrupulous reading of Derrida's deconstructive critique, even if it is often challenged. ²⁹ Perhaps the most significant connection between the theorists is found in their respective metaphysical critiques: Derrida's *différance* and Agamben's 'abandonment', or simply, the 'ban'. ³⁰ In critiquing metaphysical completion they both illustrate 'a minimal but irreducible difference between two elements', which then suffers either 'contamination or even a proliferation' via *différance*, or a 'strategic articulation across an obscure fictional nexus' via the 'ban'. ³¹ Notwithstanding slight differences between the concepts, ³² there are prescient resonances between them, something Attell makes very clear. He states that of all Agamben's juridico-political concepts the 'ban' 'is the most evidently "deconstructive" in its derivation and function' and that its 'deconstructive provenance' must not be neglected: ³³

It would be difficult to overstate the importance of the logic of the ban in Agamben's work from *Homo Sacer* on. This logic is, for example, the linchpin of his biopolitical theory, since it is by virtue of the ban-structure that *zōē* is excluded-and-included in the juridico-political body of the human, thus becoming bare-life. ³⁴

²⁹ *ibid.*, 4: 'the critique of deconstruction runs like a sort of unconscious beneath the limpid prose of Agamben's entire oeuvre'.

³⁰ Of relevance here, as Attell notes, *ibid.*, 127, is that Agamben's critique follows that found in Jean-Luc Nancy's, arguably deconstructive, essay "Abandoned Being", trans. Brian Holmes, in *The Birth to Presence*, trans. Brian Holmes and others (Stanford: Stanford University Press, 1994), 36–47.

³¹ Attell, *Giorgio Agamben*, 130.

³² Although see Seshadri, in *HumAnimal: Race, Law, Language*, 133, where she argues that this is 'the paradeconstruction that Agamben engages in'; a parody of Derrida's metaphysical critique. See 131–135 generally.

³³ Attell, *Giorgio Agamben*, 127. Recalling that Agamben adopts 'abandonment' from Nancy, it is worth noting the immense affinity between Nancy's work and Derrida's; this may account for the similarities between 'abandonment' and *différance*. Indeed, as Marie-Eve Morin states in *Jean-Luc Nancy* (Cambridge: Polity Press, 2012), 19: 'the influence of Derrida's questioning on Nancy's intellectual trajectory cannot be underestimated. In a sense, Derrida is the most important force in the milieu in which Nancy, the student and the young academic, comes to his own questioning'. Then see generally 19–21.

³⁴ Attell, *Giorgio Agamben*, 130. See also Seshadri, *HumAnimal: Race, Law, Language*, 86.

From the three theorists we can now see that there are intimate connections between deconstruction and bio-politics, particularly between the work of Derrida and Agamben as explicated by Seshadri and Attell. However this chapter's engagement lies with Foucault's original bio-political thinking, *à la* Malabou, and therein attempts a connection between the functioning of bio-politics and Derrida's deconstructive critique.

Foucault, Bio-Politics, and Panopticism: a diagram

Bio-politics: political power administering life

Foucault's bio-political thought warrants little, if any, introduction. It proposed to explain how, why, and where 'political power had assigned itself the task of administering life', ³⁵ in which it monitored, developed, and regulated biological life, or moreover a biological population, rather than individual subjects. ³⁶ This was achieved by two complimentary means: disciplining the individual body and regulating the biological body. Commenting on these Thomas Lemke makes a crucial observation:

The difference between the two components of biopolitics should, however, be acknowledged with caution. Foucault stresses that discipline and control form "two poles of development linked together by a whole intermediary cluster of relations". They are not independent entities but define each other.

³⁵ Foucault, *The History of Sexuality, Vol. 1*, 139.

³⁶ *ibid.*, 139: '*a bio-politics of the population*'. But note the problem of an exhaustive definition of bio-politics. See Campbell and Sitze, *Biopolitics: A Reader*, 6: '...we don't suppose that Foucault's brief remarks on biopolitics, whether in his little 1976 book or, especially, in the lectures concurrent with that book, can be interpreted as though they are consistent, transparent, and fully worked-through'.

Accordingly, discipline is not a form of individualization applied to already existing individuals, but rather it presupposes a multiplicity.³⁷

Lemke's point here is important; Foucault insisted that 'the disciplines' and the mechanisms which 'regulated' the population were not *wholly* separate. He argued that whilst juridical mechanisms were not the same as either disciplinary or bio-political mechanisms,³⁸ it was neither the case that these different mechanisms 'cancelled' out or 'replaced' one another, or disappeared within a crude chronology,³⁹ and neither was it the case that they operated without contamination between one another.⁴⁰ Rather Foucault stated there was a 'continuum of apparatuses',⁴¹ a 'dovetail[ing]' effect,⁴² and 'a profound historical link' between all the mechanisms,⁴³ because 'there is not a series of successive elements, the appearance of the new causing the earlier ones to disappear. There is not the legal age, the disciplinary age, and then the age of security'.⁴⁴ As he explained 'we have a triangle:

³⁷ Thomas Lemke, *Biopolitics: An Advanced Introduction*, trans. Eric Frederick Trump (New York and London: New York University Press, 2011), 37. The Foucault quotes are from, respectively, Foucault, *The History of Sexuality, Vol. 1*, 139 and Foucault, *Society Must Be Defended*, 242–243.

³⁸ See Foucault, *The History of Sexuality, Vol. 1*, 144, Foucault, *Society Must Be Defended*, 34–40, Foucault, *Discipline and Punish*, 183 and Michel Foucault, *Security, Territory, Population: Lectures at the Collège de France, 1977–78*, trans. Graham Burchell and ed. Arnold I. Davidson (Hampshire: Palgrave Macmillan, 2009), 66.

³⁹ Foucault, *Security, Territory, Population*, 7, 107. See also Foucault, *Society Must Be Defended*, 242 and Foucault, *The History of Sexuality, Vol. 1*, 144.

⁴⁰ See Foucault, *The History of Sexuality, Vol. 1*, 144. See also the Michel Foucault, "Truth and Juridical Forms", trans. Robert Hurley, in *Power: Essential Works of Michel Foucault 1954–1984: Volume Three*, ed. James D. Faubion (London: Penguin Books, 2002), for Foucault's in-depth analysis over the course of five lectures of (ibid., 4) 'juridical forms and their evolution in the field of penal law'.

⁴¹ Foucault, *The History of Sexuality, Vol. 1*, 144.

⁴² Foucault, *Society Must Be Defended*, 242.

⁴³ Foucault, *Security, Territory, Population*, 108.

⁴⁴ ibid., 8. See also Foucault, *Society Must Be Defended*, 250: What is more, the two sets of mechanisms – one disciplinary and the other regulatory – do not exist at the same level. Which means of course that they are *not* mutually exclusive and *can* be articulated with each other'. Emphasis added.

sovereignty, discipline, and governmental management, which has population as its main target and apparatuses of security as its essential mechanism'.⁴⁵

Consequently, the topic examined within Foucault's work is not *merely* disciplinary because it blurs disciplinary, normalising, and bio-political actions; this is Jeremy Bentham's 'architectural figure'⁴⁶ of the Panopticon, which is discussed at length in Foucault's 1975 book *Discipline and Punish: The Birth of the Prison*.⁴⁷ It features prominently in Foucault's account of the development of discipline, as is well known.⁴⁸ However Foucault then abstracts the concept into 'panopticism',⁴⁹ which broaches both discipline and normalisation: 'Panopticism ... [is] a type of power that is ... the molding and transformation of individuals in terms of certain norms'.⁵⁰ Indeed, it has even been argued that Foucault's use of Bentham's Panoptic-utilitarianism acts as an influential pre-cursor to his later work on bio-politics and governmentality.⁵¹ In what follows panopticism is examined with regards to its bio-political significance and the motor scheme of visibility which resides at its core. This examination begins with an account of the Bentham's original Panopticon.

⁴⁵ Foucault, *Security, Territory, Population*, 107–108.

⁴⁶ Foucault, *Discipline and Punish*, 200.

⁴⁷ *ibid.*, 195–228.

⁴⁸ *ibid.*, 170: 'The exercise of discipline presupposes a mechanism that coerces by means of observation; an apparatus in which the techniques that make it possible to see induce effects of power, and in which, conversely, the means of coercion make those on whom they are applied clearly visible'.

⁴⁹ *ibid.*, 208. See also Anne Brunon-Ernst, "Deconstructing Panopticism into the Plural Panopticons", in *Beyond Foucault: New Perspectives on Bentham's Panopticon*, ed. Anne Brunon-Ernst (Farnham: Ashgate, 2012), 26, footnote 11. Here Brunon-Ernst distinguishes between 'Panopticon' and 'panopticism' as conceptual terms: 'Scholars should use "panopticism" to refer to features elucidated by Foucault's texts on Bentham's first 1786–91 projects, and not to the Panopticon itself'.

⁵⁰ Foucault, "Truth and Juridical Forms", 70.

⁵¹ See Anne Brunon-Ernst, *Utilitarian Biopolitics: Bentham, Foucault and Modern Power* (Oxon: Routledge, 2016), 1: 'The book's main argument is that Foucault assimilated Bentham's utilitarianism when forging his theories on government and that a recognition of this source of Foucault's inspiration allows for a reconsideration of the concept of biopolitics itself.'

Bentham's Panopticon.

Bentham's Panopticon was designed in the late 1700s and published in a 1791 collection entitled *Panopticon: or the Inspection House*.⁵² The design and concordant aims of the Panopticon became synonymous with Bentham's larger theoretical endeavours in utilitarianism because he believed the architectural concept could achieve utilitarian ends:

*Morals reformed – health preserved – industry invigorated – instruction diffused – public burthens lightened – Economy seated, as it were, on a rock – the gordian knot of the Poor-Laws are not cut, but untied – all by a simple idea in Architecture!*⁵³

This opening gambit presents the Panopticon as a bastion of utilitarian ideals: it cures the sick; reforms the violent; educates or trains the population; and provides work for the idle.⁵⁴ It also achieves these results in a variety of institutional settings: prisons; work-houses; factories, insane asylums; hospitals; and even schools.⁵⁵ Here one finds the undisputed locus of Benthamite utilitarianism.⁵⁶ And at the core of this design lies a fever-stricken obsession for observation and a peculiar account of visuality.

⁵² Jeremy Bentham, *The Panopticon Writings* (London and New York: Verso, 1995), 31. This volume, *The Panopticon Writings*, contains all Bentham's 'Panopticon Letters' and a selection of his 'Postscript' writings. For a general informative account see also Gertrude Himmelfarb, *Victorian Minds* (London: Widenfeld and Nicolson, 1968), 32–81.

⁵³ Bentham, *The Panopticon Writings*, 31.

⁵⁴ *ibid.*, 34.

⁵⁵ *ibid.*, 32.

⁵⁶ However it has been argued that the key motivating factor of the Panopticon was economic prosperity. See Himmelfarb, *Victorian Minds*, 52: 'In the new and improved Panopticon, health, morals, and industry all conspired to the same end – that of economy'.

This obsession is revealed through Bentham's feverous decree regarding the Panopticon's successful operation: 'The essence of it consists, then, in the *centrality* of the inspector's situation, combined with the well-known and most effectual contrivances for *seeing without being seen*'.⁵⁷ Here, alongside the instruction for the centrality of the inspector's tower, is Bentham's clear and prominent motor scheme of visuality whereby the inspector sees but is not seen; this is the '*scheme*, that is, a *motive*, produced by a rational imagination, enabling it to force open the door to an epoch and open up exegetical perspectives suited to it'.⁵⁸ This asymmetrical construction of visuality – '*seeing without being seen*' – is critical for the success of the Panopticon because only the illusion of constant surveillance guarantees constant discipline.⁵⁹ Bentham's most pertinent account of this comes in stating the 'fundamental advantage' of the design:

I mean, the *apparent omnipresence* of the inspector (if divines will allow me the expression), combined with the extreme facility of his *real presence*.⁶⁰

This is the heart of the Panopticon's motor scheme in which visuality, or observation, is structured asymmetrically because of the combination of the *real presence* of the inspector and his *apparent omnipresence*, thus illustrating an '*enlargement, extension, or transformation* of a concept at a given moment in the history of thought'.⁶¹ Miran Božovič further explains this by stating 'the inspector is apparently omnipresent precisely insofar as he is not really present, since a momentary exposure to the eyes of the prisoners is sufficient

⁵⁷ Bentham, *The Panopticon Writings*, 43. All emphasis in the original.

⁵⁸ Malabou, *Plasticity at the Dusk of Writing*, 13.

⁵⁹ Miran Božovič, *An Utterly Dark Spot: Gaze and Body in Early Modern Philosophy* (Ann Arbor: The University of Michigan Press, 2000), 111: 'the illusion of constant surveillance: the prisoners are not really always under surveillance, they just think or imagine that they are'.

⁶⁰ Bentham, *The Panopticon Writings*, 45.

⁶¹ Malabou, *Plasticity at the Dusk of Writing*, 13.

for him to lose his apparent omnipresence'.⁶² Thus for Bentham's revolutionary architectural project asymmetrical visibility is the critical motor scheme. Returning to Foucault, his account of the Panopticon shows much the same to be true.

Foucault's Panopticism.

Within Foucault's thought Bentham's Panopticon is extremely important. It appears numerous times throughout his *oeuvre*,⁶³ the most famous of which being the aforementioned reference in his *Discipline and Punish*.⁶⁴ But it also appears two years earlier, in 1973, in his lecture series 'Truth and Juridical Forms' delivered at the Pontifical Catholic University of Rio de Janeiro,⁶⁵ and in no less than four of the lecture series Foucault delivered at the Collège de France spanning nearly a decade: (in chronological order) *The Punitive Society* (1972–73);⁶⁶ *Psychiatric Power* (1973–74);⁶⁷ *Security, Territory, Population* (1977–78);⁶⁸ and *The Birth of Biopolitics* (1978–79).⁶⁹ Turning to Foucault's own thought on the importance of this concept we recall his assertion in 'Truth and Juridical Forms':

⁶² Božovič, *An Utterly Dark Spot*, 103.

⁶³ For an account of Foucault's references to the Panopticon see Brunon-Ernst, "Deconstructing Panopticism into the Plural Panopticons", 28, footnote 43.

⁶⁴ Foucault, *Discipline and Punish*, 195–228.

⁶⁵ Foucault, "Truth and Juridical Forms", 58, 70–74.

⁶⁶ Michel Foucault, *The Punitive Society: Lectures at the Collège de France, 1972–73*, trans. Graham Burchell and ed. Arnold I. Davidson. (Hampshire: Palgrave Macmillan, 2015), 64.

⁶⁷ Michel Foucault, *Psychiatric Power: Lectures at the Collège de France, 1973–74*, trans. Graham Burchell and ed. Arnold I. Davidson. (Hampshire: Palgrave Macmillan, 2008), 73–79.

⁶⁸ Foucault, *Security, Territory, Population*, 66.

⁶⁹ Michel Foucault, *The Birth of Biopolitics: Lectures at the Collège de France, 1978–79*, trans. Graham Burchell and ed. Arnold I. Davidson (New York: Picador, 2008) 67, 255–56.

I hope historians of philosophy will forgive me for saying this, but I believe that Bentham is more important for our society than Kant or Hegel. All our societies should pay homage to him. ⁷⁰

Following this Foucault then stated: ‘We live in a society where panopticism reigns’. ⁷¹ These statements evidence the crucial importance of Bentham’s Panopticon in Foucault’s *oeuvre* and they also introduce Foucault’s neologism ‘panopticism’, an abstract concept derived from Bentham’s original. ⁷² Panopticism refers to an exercise of power over individuals which is a synthesis of control, punishment, and compensation, which implements transforming corrections towards certain norms. ⁷³ Importantly, Foucault’s panopticism features the same motor scheme as the Panopticon, that of asymmetrical visibility. This creates a synesthetic trap whereby ‘everything the individual does is exposed to the gaze of an observer who watches ... without anyone being able to see him’. ⁷⁴ Consequently in Foucault’s work there is also an ‘*enlargement, extension, or transformation* of a concept at a given moment in the history of thought’. ⁷⁵ However the difference between the Panopticon and panopticism ⁷⁶ is that the latter is an ‘indefinitely generalizable mechanism’. ⁷⁷

⁷⁰ Foucault, “Truth and Juridical Forms”, 58.

⁷¹ *ibid.* Note that at ⁷⁰ Foucault gives another account of this point: ‘Today we live in a society programmed basically by Bentham, a panoptic society, a society where panopticism reigns’.

⁷² *ibid.*, 71: ‘... in homage to Bentham – “panopticism”’.

⁷³ *ibid.*, 70.

⁷⁴ *ibid.*, 58. Foucault, in *Discipline and Punish*, 201, also noted the Panopticon’s motor scheme of asymmetrical visibility: ‘Unverifiable: the inmate must never know whether he is being looked at at any one moment; but he must be sure that he may always be so’.

⁷⁵ Malabou, *Plasticity at the Dusk of Writing*, 13.

⁷⁶ Brunon-Ernst, “Deconstructing Panopticism into the Plural Panopticons”, 41: ‘The Panopticon is not panopticism’.

⁷⁷ Foucault, *Discipline and Punish*, 216.

Considering the importance of this concept within Foucault's work on disciplinary and biopolitical power, this point warrants elaboration. ⁷⁸

Foucault defines panopticism in two ways. The narrow definition sees panopticism as the true intention behind Bentham's design: 'Bentham's Panopticon is not a model of a prison ... it is a model, and Bentham is quite clear about this, for a prison, but also for a hospital, for a school, workshop, orphanage, and so on'. ⁷⁹ This abstract model of power, derived from the disciplines, operates via a distinct negative form of visibility:

Disciplinary power, on the other hand, is exercised through its invisibility: at the same time it imposes on those whom it subjects a principle of compulsory visibility. ⁸⁰

Foucault reinforces this negative asymmetrical account of visibility in explaining that the subject of panopticism 'is seen, but he does not see; he is the object of information, never a subject in communication'. ⁸¹ This repeated account of asymmetrical visibility ⁸² is clearly

⁷⁸ However panopticism is not a totalising and universal type of power; for this would be to misunderstand Foucault's account of power. Rather for Foucault power is 'something that functions only when it is part of a chain. It is never localized here or there, it is never in the hands of some, and it is never appropriated in the way that wealth or a commodity can be appropriated'. See Foucault, *Society Must Be Defended*, 29. For further clarification of the panopticism's lacking universality see Michel Foucault, "The Eye of Power", trans. Colin Gordon, in *Power/Knowledge: Selected Interviews and Other Writings 1972-77*, ed. Colin Gordon (Brighton: Harvester Press, 1980), 148: 'the procedures of power that are at work in modern societies are much more numerous, diverse and rich. It would be wrong to say that the principle of visibility governs all technologies of power used since the nineteenth century'. Finally, for a contextual analysis critiquing the omnipotence of the gaze in surveillance societies, see Véronique Voruz, "The status of the gaze in surveillance societies", in *Re-reading Foucault: On Law, Power and Rights*, ed. Ben Golder (Oxon: Routledge, 2013), 144-45.

⁷⁹ Foucault, *Psychiatric Power*, 73-4. See also Bentham, *The Panopticon Writings*, 34.

⁸⁰ Foucault, *Discipline and Punish*, 187.

⁸¹ *ibid.*, 200.

⁸² *ibid.*, 222: '[speaking of the disciplines] They have the precise role of introducing insuperable asymmetries and excluding reciprocities'; *ibid.*, 223: 'panopticism enables ... a machinery that is both immense and minute,

the motor scheme of panopticism, for this ‘machinery that assures dissymmetry, disequilibrium, difference’,⁸³ is what ‘constitute[s], both vaguely and definitely, a material “atmosphere”’.⁸⁴

Thereafter Foucault’s abstract definition describes panopticism as a ‘form for a series of institutions’⁸⁵ and ‘a generalizable model of functioning’.⁸⁶ This develops panopticism from a disciplinary concept to one which underpins the bio-political normalisation and regulation of the population, hence far from a narrow interpretation of Bentham’s Panopticon:

But the Panopticon must not be understood as a dream building: it is the diagram of a mechanism of power reduced to its ideal form; its functioning, abstracted from any obstacle, resistance or friction, must be represented as a pure architectural and optical system; it is in fact a figure of political technology that may and must be detached from any specific use.⁸⁷

Here Foucault repeatedly describes panopticism as a ‘generalizable’⁸⁸ form of power which will become critical within his *oeuvre* for underpinning bio-political mechanisms. It is the ‘diagram’ of an ideal form which by design must be detached from concrete instances. And once again asymmetrical visibility is the motor scheme of this concept, whereby a ‘model-image’⁸⁹ operates and illustrates that ‘the power exercised is only ever an optical effect’.⁹⁰

which supports, reinforces, multiplies the asymmetry of power and undermines the limits that are traced around the law’.

⁸³ *ibid.*, 202.

⁸⁴ Malabou, *Plasticity at the Dusk of Writing*, 14.

⁸⁵ Foucault, *Psychiatric Power*, 74.

⁸⁶ Foucault, *Discipline and Punish*, 205.

⁸⁷ *ibid.*

⁸⁸ *ibid.*, 205, 207, 209, 215, 216, 222, 224.

⁸⁹ Malabou, *Plasticity at the Dusk of Writing*, 14.

⁹⁰ Foucault, *Psychiatric Power*, 77.

Later we will return to this abstract and generalizable form of panopticism when consulting Gilles Deleuze's reading of this ideal form in order to illustrate how it connects inextricably with Foucault's bio-political thought.⁹¹ However the chapter now moves to examine Derrida's deconstructive juridical thought in order to lay the ground for an attempted connection between these two juridico-political fields via asymmetrical visibility.

Derrida, Law, and Anachrony: *différance*

Deconstruction and Hauntology

Turning to Derrida's deconstructive juridical thought one finds the same asymmetrical visibility playing an equally crucial role. References to this visual account are scattered throughout his juridical texts, from those well-known to those more obscure. In what follows its original proposition will be explored and its significance thereafter will be examined.

In Derrida's *Specters of Marx: The State of the Debt, the Work of Mourning and the New International*, he uses his deconstructive critique of metaphysics to solicit Karl Marx's dogmatic 'ontology of presence as actual reality and as objectivity'.⁹² Accordingly he states: 'Ontology is a conjuration'.⁹³ Derrida's primary methodology is a deconstructive reading of William Shakespeare's *Hamlet* which illuminates the play's ontological critique, something which Derrida terms – in a playful French-English homonym – '*hauntology*':

Let us call it a *hauntology*. This logic of haunting would not be merely larger and more powerful than an ontology or a thinking of Being (of the "to be", assuming that it is a matter of Being in the "to be or not

⁹¹ Gilles Deleuze, *Foucault*, trans. and ed. Seán Hand (London: Bloomsbury, 2006), 21–38.

⁹² Derrida, *Specters of Marx*, 214.

⁹³ *ibid.*, 202.

to be”, but nothing is less certain). It would harbour within itself, but like circumscribed places or particular effects, eschatology and teleology themselves. 94

Hauntology, in Derrida’s deconstructive theory, is one of many ‘nonsynonymous substitutions’, 95 such as *différance*, trace, supplement, 96 or *pharmakon*, 97 which all demonstrate his critique of the metaphysics of presence. Hauntology plays off of the ‘presence’ of King Hamlet’s ghost in Act I, Scene V of Shakespeare’s tragedy, 98 as it ‘appears’ and commands Prince Hamlet to ‘Revenge his foul and most unnatural murder’ 99 at the hands of Claudius ‘Ay, that incestuous, that adulterate beast’. 100 For as commented by Simon Critchley and Jamieson Webster (as well as Derrida) 101 there is nothing ‘present’ in the ghost’s appearance: ‘The ghost *is* nothing, of course, so Barnardo confesses that he has seen it, that is, not seen it. In matters ghostly, there *is* nothing to see’. 102 Hence Derrida’s critique utilises the ghost’s simultaneous ‘presence’ *and* ‘absence’ to deconstruct ‘the sharp distinction between the real and the unreal, the actual and the inactual, the living and the non-living, being and non-being (“to be or not to be”, in the conventional reading), in the

94 *ibid.*, 10. For an account of Derrida, *Hamlet*, and deconstruction see Hélène Cixous, “Shakespeare Ghosting Derrida”, trans. Laurent Milesi. *The Oxford Literary Review* 34, no. 1 (2012): 1–24.

95 Derrida, “Différance”, 12.

96 See Jacques Derrida, *Of Grammatology*, trans. Gayatri Chakravorty Spivak (Baltimore and London: John Hopkins University Press, 1976), 141–164.

97 See Jacques Derrida, “Plato’s Pharmacy”, trans. Barbara Johnson, in *Dissemination* (London: Continuum, 2004), 67–186.

98 *Hamlet*, 1.5.1–91.

99 *ibid.*, 1.5.25.

100 *ibid.*, 1.5.42.

101 Derrida, *Specters of Marx*, 5: ‘The Thing is still invisible, it is *nothing* visible ...’.

102 Simon Critchley and Jamieson Webster, *The Hamlet Doctrine* (London/New York: Verso, 2013), 26.

opposition between what is present and what is not...'.¹⁰³ As Derrida explains, hauntology not only affects the concept of metaphysical being but *every* concept:

To haunt does not mean to be present, and it is necessary to introduce haunting into the very construction of a concept. Of every concept, beginning with the concepts of being and time. That is what we would be calling here a hauntology.¹⁰⁴

Consequently, hauntology also critiques the metaphysical concept of time. Derrida emphasises this through repeated reference to Prince Hamlet's famous line: 'The time is out of joint. O cursed spite/ That ever I was born to set it right!'.¹⁰⁵ This additional metaphysical critique illustrates that just as there can be no sovereign instance of presence or being within metaphysics, equally there cannot be a sovereign 'present' moment in time because the deconstructive trace obliterates the '*present, past, and future*':¹⁰⁶

The concepts of *present, past, and future*, everything in the concepts of time and history which implies evidence of them – the metaphysical concept of time in general – cannot adequately describe the structure of the trace.¹⁰⁷

Consequently Derrida's thought critiques being, presence, and the temporal moment of 'Now', or 'the living present';¹⁰⁸ these are the fundamentals of deconstructive critique.¹⁰⁹

¹⁰³ Derrida, *Specters of Marx*, 12. See also Jacques Derrida and Bernard Stiegler, "Spectrographies", trans. Jennifer Bajorek, in *Echographies of Television: Filmed Interviews* (Cambridge: Polity Press, 2002), 117: 'A spectre is both visible and invisible, both phenomenal and nonphenomenal: a trace that marks the present with its absence in advance. The spectral logic is de facto a deconstructive logic'.

¹⁰⁴ Derrida, *Specters of Marx*, 202.

¹⁰⁵ *Hamlet*, 1.5.196–197.

¹⁰⁶ Derrida, *Of Grammatology*, 67.

¹⁰⁷ *ibid.* For an account of this point see Donald Cross, "The *Vigil* of Philosophy: Derrida on Anachrony", *Derrida Today* 8, no. 2 (2015): 185–188.

¹⁰⁸ Derrida, *Of Grammatology*, 67.

However in order to deduce how this deconstructive critique relates to asymmetrical visuality and Derrida's juridical thought, we need to return to Act I, Scene V of *Hamlet*.

Hamlet, The Visor Effect, 'Anachrony makes the law'

The closing scene of Act I in *Hamlet* sees the ghost of King Hamlet appear and command revenge from Prince Hamlet.¹¹⁰ This is quite literally the command of a sovereign: 'Wielding the threefold authority of supernatural being, king, and father, he very appropriately begins with a command'.¹¹¹ Derrida reflects on the specific details of this scene and comments that the ghost, of course, is not 'present' because he is a ghost and thus invisible: 'The Thing is still invisible, it is *nothing* visible ("I haue seene nothing") ...'.¹¹² He then analyses the ghost's famous costume, for it is clad in armour and wearing a helmet with a visor which obscures the Prince's view of the ghost's face.¹¹³ This is a critical point of Derrida's analysis because this leads us to an uncanny account of negative, asymmetrical visuality and Derrida's corresponding '*visor effect*':

¹⁰⁹ Derrida, "Différance," 13: 'It is because of *différance* that the movement of signification is possible only if each so-called 'present' element, each element appearing on the scene of presence, is related to something other than itself, thereby keeping within itself the mark of the past element, and already letting itself be vitiated by the mark of its relation to the future element, this trace being related no less to what is called the future than to what is called the past, and constituting what is called the present by means of this very relation to what it is not: what it absolutely is not, not even a past or a future as a modified present'.

¹¹⁰ *Hamlet*, 1.5.7, 1.5.25.

¹¹¹ William Shakespeare, *The Oxford Shakespeare: Hamlet*, ed. G. R. Hibbard (Oxford: Oxford University Press, 1994), 185, note 2.

¹¹² Derrida, *Specters of Marx*, 5.

¹¹³ *ibid.*, 6–8. See also Anselm Haverkamp, *Shakespearean Genealogies of Power: A Whispering of Nothing in Hamlet, Richard II, Julius Caesar, Macbeth, The Merchant of Venice, and The Winter's Tale* (London and New York: Routledge, 2011), 23: 'It takes the stage in the armor of the old King ... but it otherwise bears no individual features that the son could recognize'.

This Thing meanwhile looks at us and sees us not see it even when it is there. A spectral asymmetry interrupts here all specularity. It de-synchronizes, it recalls us to anachrony. We will call this the *visor effect*: we do not see who looks at us. 114

In developing the *visor effect* Derrida then describes both the synesthetic experience which accompanies it, as well as how this asymmetrical visuality relates to law:

This spectral *someone other looks at us*, we feel ourselves being looked at by it, outside of any synchrony, even before and beyond any look on our part, according to an absolute anteriority ... and asymmetry, according to an absolutely unmasterable disproportion. Here anach[r]ony makes the law. 115 To feel ourselves seen by a look which it will always be impossible to cross, that is the *visor effect* on basis of which we inherit from the law. Since we do not see the one who sees us, and who makes the law, who delivers the injunction ... since we do not see the one who orders “swear”, we cannot identify it in all certainty, we must fall back on its voice. 116

This crucial passage contains several important points for Derrida’s juridical thought. Firstly because the ghost is a sovereign authority Derrida equates its commands with those of law; they are ‘injunctions’. 117 Secondly, he posits that the functioning of these legal commands is disrupted, desynchronised, or otherwise deconstructed due to an ‘anachrony’ 118 caused by

114 Derrida, *Specters of Marx*, 6.

115 *ibid.*, 6. Of note is that the 1994 and 2006 Routledge English translations of *Specters of Marx* feature the word ‘anachony’ and not ‘anachrony’. Peggy Kamuf, the translator for both editions, has confirmed that the loss of the ‘r’ in these editions is a typographical error. This conversation is on file with the author. Reference to the original French text confirms this; see Jacques Derrida, *Spectres de Marx: L’État de la dette, le travail du deuil, et la nouvelle Internationale*, (Paris: Éditions Galilée, 1993), 27 : ‘L’anachronie fait ici la loi’.

116 *ibid.*, 6–7.

117 *ibid.*, 7.

118 M. C. Howatson, ed., *The Oxford Companion to Classical Literature (3rd Edition)* (Oxford: Oxford University Press, 2011), 39: ‘anachrony – The narration of events taken outside their chronological sequence, usually in a narrator’s recapitulation of past happenings’.

the *visor effect*: ‘anachrony makes the law’.¹¹⁹ Thus the subject of the law is unable to relate to the source of the law in either presence, time, or metaphysical being.¹²⁰ Consequently they experience the law as an ‘unmasterable disproportion’¹²¹ produced by the *visor effect*.¹²² These points reveal the motor scheme in Derrida’s juridical thought, whereby ‘the essential core can pass through the narrow lens’ of the *visor effect*’s asymmetrical visuality.¹²³

From the work examined above it is clear that this account has strong connections to the motor scheme of asymmetrical visuality in Foucault’s work on bio-politics. However the instance detailed above from *Specters of Marx* is not the only example of this deconstructive concept featuring in Derrida’s juridical thought; rather asymmetrical visuality is in fact a prolific element in his deconstructive legal theory.

Before the (asymmetrical) Law

Beyond *Specters of Marx* Derrida then makes two direct references to the *visor effect*, both of which reinforce its significance to his juridical thought. In a 1993 interview with Bernard Stiegler¹²⁴ Derrida explicitly refers to:

¹¹⁹ Derrida, *Specters of Marx*, 7. See also Gérard Genette, *Narrative Discourse: An Essay in Method*, trans. Jane E. Lewin (Oxford: Basil Blackwell, 1980), 40: ‘the general term *anachrony* [is used] to designate all forms of discordance between the two temporal orders of story and narrative (we will see later that these discordances are not entirely limited to analepsis and prolepsis)’.

¹²⁰ Derrida, *Specters of Marx*, 7. See also 32: ‘...an anachrony, some *Un-Fuge*, some “out of joint” dislocation in Being and in time itself ...’.

¹²¹ *ibid.*, 7.

¹²² Derrida reinforces this point several times: *ibid.*, 7: ‘The armor ... permit[s] him to see without being seen’; *ibid.*, 8: ‘... someone, beneath the armor, can safely see without being seen or without being identified’; and *ibid.*, 8: ‘... the supreme insignia of power: the power to see without being seen’.

¹²³ Malabou, *Plasticity at the Dusk of Writing*, 13.

¹²⁴ Derrida and Stiegler, “Spectrographies”. Note this is the same year as the publication for the original French version of *Specters of Marx*.

the “visor effect”: the ghost looks at or watches us, the ghost concerns us. The specter is not simply someone we see coming back, it is someone by whom we feel ourselves watched, observed, surveyed, as if by the law: we are “before the law,” without any possible symmetry, without reciprocity, insofar as the other is watching only us, concerns only us, we who are observing it (in the same way that one observes and respects the law) without even being able to meet its gaze. Hence this dissymmetry and, consequently, the heteronomic figure of the law. ¹²⁵

Then, from a text published in French two years later, Derrida states the following in *Archive Fever: A Freudian Impression*: ‘The phantom makes the law – even, and more than ever, when one contests him. Like the father of Hamlet behind the visor, and by virtue of the *visor effect*, the specter sees without being seen’. ¹²⁶ These references illustrate a continuing, acute, and clear account of the asymmetrical and anachronous visuality which affects Derrida’s juridical thought.

Evidently, within Derrida’s deconstructive legal theory, the source of law is hidden from view due to deconstructive critiques; those ‘nonsynonymous substitutions’ ¹²⁷ which disrupt presence, time, and metaphysical being. It is submitted that this anachronous asymmetrical visuality operates as the motor scheme in Derrida’s juridical thought because, as per Malabou’s description, it ‘constitute[s], both vaguely and definitely, a material “atmosphere”’ for his theory. ¹²⁸ As Derrida states in his essay ‘Before the Law’ (a reading of Franz Kafka’s famous parable of the same name from *The Trial*): ¹²⁹ ‘What *must not* and cannot be approached is the origin of *différance*: it must not be presented or represented and above all

¹²⁵ *ibid.*, 120.

¹²⁶ Jacques Derrida, *Archive Fever: A Freudian Impression*, trans. Eric Prenowitz (Chicago and London: University of Chicago Press, 1996), 61.

¹²⁷ Derrida, “Différance”, 12.

¹²⁸ Malabou, *Plasticity at the Dusk of Writing*, 14.

¹²⁹ See Franz Kafka, *The Trial*, trans. Idris Parry (London: Penguin Classics, 2000), 166–167.

not penetrated. That is the law of the law, the process of a law of whose subject we can never say “There it is”, it is here or there’.¹³⁰ Hence the deconstructive critique of *différance* differs, defers, disrupts, and desynchronises the subject of the law in order that it may never be seen nor identified. This is the fourth example within Derrida’s juridical thought which illustrates the asymmetrical viscosity at the core of law. However there are several other examples from Derrida’s *oeuvre* which could be consulted. Here one could refer to “The Laws of Reflection: Nelson Mandela, In Admiration”,¹³¹ “Declarations of Independence”,¹³² or “Force of Law: The ‘Mystical Foundation of Authority’”¹³³ for similar accounts of law’s operative asymmetry.

¹³⁰ Jacques Derrida, “Before the Law”, trans. Avital Ronnell and Christine Roulston, in *Acts of Literature*, ed. Derek Attridge (New York: Routledge, 1992), 205.

¹³¹ Jacques Derrida, “The Laws of Reflection: Nelson Mandela, In Admiration”, trans. Mary Ann Cows and Isabelle Lorenz, in *For Nelson Mandela*, eds. Jacques Derrida and Mustapha Tlili (New York: Seaver Books, 1987), 22. Derrida states there is a ‘[a] terrifying dissymmetry’ in the law, with ‘no simply assignable origin for the history of law, only a reflecting apparatus, with projections of images, inversions of paths, interior duplications, and effects of history for a law whose structure and whose “history” consist in taking away the origin.’

¹³² Jacques Derrida, “Declarations of Independence”, trans. Tom Keenan and Tom Pepper, in *Negotiations: Interventions and Interviews, 1971-2001*, ed. Elizabeth Rottenberg (Stanford: Stanford University Press, 2002), 49–50. Here Derrida describes the temporal anachrony illustrated by the actions of those who signed the Declaration of Independence to constitute the United States of America: ‘But these people do not exist. They do *not* exist as an entity, the entity does *not* exist *before* this declaration, not *as such*... The signature invents the signer. This signer can only authorize him-or herself to sign once he or she has come to the end – if one can say this of his or her own signature in a sort of fabulous retroactivity’.

¹³³ Jacques Derrida, “Force of Law: The ‘Mystical Foundation of Authority’”, trans. Mary Quaintance, in *Acts of Religion*, ed. Gil Anidjar (New York: Routledge, 2002), 241. Here Derrida states that law’s originary moment does not exist in a present moment within a chronology linear time. Rather the ‘very moment of foundation or institution... is never a moment inscribed in the homogenous fabric of a story or history, since it rips it apart with one decision.’

From the numerous accounts given above, it is clear that within Derrida's juridical thought the *visor effect* and asymmetrical visibility are vital for the functioning of law; they ensure that the law is presented asymmetrically to those who are subjected to it:

What remains concealed and invisible in each law is thus presumably the law itself, that which makes laws of these laws, the being-law of these laws. ¹³⁴

The concealment of the law ensures that it remains at a distance, out of sight, and ultimately in a superior position within a disproportionate power exchange. In addition to Derrida's prominent use of *Hamlet* he also utilises Kafka's parable to illustrate this, in which the 'door keeper' is a parallel to the ghost of King Hamlet and indeed the inspector in Bentham's Panopticon: 'the doorkeeper, who is himself the observer, overseer, and sentry, the very figure of vigilance...'. ¹³⁵ The door keeper illustrates that law's subjects are watched and yet denied any reciprocity, for there is 'no itinerary, no method, no path to accede to the law'. ¹³⁶ In the parable the door keeper continuously watches and interrogates the man from the country but never allows him to experience the law which lies just beyond him. ¹³⁷ The door to the law is in fact open but the position designated for the man from the country denies him sight of the law; 'It lets the inside (*das Innere*) come into view – not the law itself, perhaps, but interior spaces that appear empty and provisionally forbidden'. ¹³⁸

This visual asymmetry is consistently present in Derrida's deconstructive account of the law, yet it is also clear that sometimes 'Derrida's project' broadens beyond visibility and thus

¹³⁴ Derrida, "Before the Law", 192.

¹³⁵ *ibid.*, 196.

¹³⁶ *ibid.*

¹³⁷ Kafka, *The Trial*, 166–167.

¹³⁸ Derrida, "Before the Law", 203.

conveys disruptions or asymmetries in time, presence, or metaphysical being; but such is what is at stake: ‘When speaking of Derrida’s project, the reference is of course to his deconstruction of the metaphysics of presence’.¹³⁹ Accordingly deconstruction informs his juridical thought beyond *merely* visuality, but this does not bar one from highlighting the disproportionate structural relation nevertheless posited between the law and its subject: ‘... we do not see the one who sees us, and who makes the law’.¹⁴⁰

Having now explained the asymmetrical visuality within Derrida’s juridical thought we will now attempt to theorise a connection between this and Foucault’s work on bio-politics.

Deconstruction and Bio-politics: The Juridico-Political Valence of the Trace

Deconstruction and Bio-politics: A connection in function?

Thus far in examining both Foucault’s bio-political thought and Derrida’s juridical thought, this chapter has argued that asymmetrical visuality operates as the motor scheme in both works. However in order to propose a fulfilling connection between the two works – *à la* those shown in Seshadri’s and Attell’s respective monographs – it is not sufficient to simply observe the shared use of a concept. Rather the challenge is to extend Malabou’s aforementioned engagement¹⁴¹ by addressing how asymmetrical visuality relates to the functioning of deconstruction and bio-politics. To achieve this both fields of thought must be brought into the same register; either Foucault’s genealogical archaeology¹⁴² or Derrida’s

¹³⁹ Jacques de Ville, *Jacques Derrida: Law as Absolute Hospitality* (Oxon: Routledge/GlassHouse, 2011), 13.

¹⁴⁰ Derrida, *Specters of Marx*, 7.

¹⁴¹ Malabou, “Will Sovereignty Ever Be Deconstructed?”, 37: ‘The philosopher has to deconstruct biopolitical deconstruction, that is, to unveil it and resist its ideological tendency’.

¹⁴² On this see Giorgio Agamben, “Philosophical Archaeology”, *Law and Critique* 20, no. 3 (2009): 211–231.

metaphysical philosophy. Considering that Derrida's thought is an ahistorical critique ¹⁴³ it is Foucault's work which must be read metaphysically. To achieve this Deleuze's thought will be utilised, for he reads Foucault as a philosopher of the metaphysical 'diagram'; 'the presentation of the relations between forces unique to a particular formation'. ¹⁴⁴

Philosophies of power: Espacement; space and time

We recall that Foucault's bio-politics is premised upon the two inextricable poles of individual discipline and population regulation. ¹⁴⁵ In analysing this point, it was suggested above that panopticism (in its most abstracted form) ¹⁴⁶ underpins Foucault's bio-political thought. ¹⁴⁷ Deleuze explains this in his book *Foucault* in the chapter 'A new cartographer (Discipline and Punish)', ¹⁴⁸ whereby Foucault's panopticism is, as per the narrow definition, 'a visual assemblage and a luminous environment ... in which the warder can see all the detainees without the detainees being able to see either him or one another'. ¹⁴⁹ But Deleuze further explains panopticism as:

a machine that not only affects visible matter in general (a workshop, barracks, school or hospital as much as a prison) but also in general passes through every articulable function. So the abstract formula of

¹⁴³ Jacques Derrida, "Autoimmunity: Real and Symbolic Suicides", trans. Pascale-Anne Brault and Michael Naas, in Giovanna Borradori, *Philosophy in a Time of Terror: Dialogues with Jürgen Habermas and Jacques Derrida* (Chicago and London: The University of Chicago Press, 2003), 131: 'This movement of "deconstruction" did not wait for us to begin speaking about "deconstruction": it has been underway for a long time, and it will continue for a long time'.

¹⁴⁴ Deleuze, *Foucault*, 61.

¹⁴⁵ Foucault, *The History of Sexuality, Vol. 1*, 139.

¹⁴⁶ Foucault, *Discipline and Punish*, 205.

¹⁴⁷ See above page 15.

¹⁴⁸ Deleuze, *Foucault*, 21–38.

¹⁴⁹ *ibid.*, 28.

Panopticism is no longer ‘to see without being seen’ but *to impose a particular conduct on a particular human multiplicity*.¹⁵⁰

Deleuze’s important explanation does two things. Firstly, it alters the register of Foucault’s work to metaphysical philosophy; secondly, it explains that panopticism, as Foucault’s ‘diagram’,¹⁵¹ imposes forms of conduct on particular human multiplicities, or rather, ‘provided the multiplicity is large (a population)’.¹⁵² Hence Deleuze explicates that the abstract methodology which Foucault utilises for ‘*regulatory controls*’ and ‘*a bio-politics of the population*’¹⁵³ is the diagram of panopticism. In Foucault’s words, it is a blueprint for bio-politics because it is a ‘way of making power relations function in a function’.¹⁵⁴ And Deleuze further explains that Foucault uses the concept due to his concern to understand instances where ‘power controls the whole field’, for ‘every diagram is a spatio-temporal multiplicity’.¹⁵⁵ This accords to Foucault’s thought whereby ‘[p]ower ... is diagrammatic’¹⁵⁶ and thus the flows of ‘power relations’ ‘do not emanate from a central point or unique locus of sovereignty,’¹⁵⁷ but rather are the varied spatial and temporal relations required for bio-political regulation. As Sven-Olov Wallenstein explains when discussing the architectural design of hospitals:

¹⁵⁰ *ibid.*, 29. All emphasis in the original.

¹⁵¹ *ibid.*, 29–30, 60–61. See also Foucault, *Discipline and Punish*, 205.

¹⁵² Deleuze, *Foucault*, 61.

¹⁵³ Foucault, *The History of Sexuality, Vol. 1*, 139.

¹⁵⁴ Foucault, *Discipline and Punish*, 207.

¹⁵⁵ Deleuze, *Foucault*, 30.

¹⁵⁶ *ibid.*, 61.

¹⁵⁷ *ibid.*, 62.

The curing machine is a way of ordering and regimenting space, and it comes close to what Foucault in *Discipline and Punish* calls a “diagram” or, to use Deleuze’s terminology on his book on Foucault, an “abstract machine”.¹⁵⁸

From Deleuze’s and Wallenstein’s accounts of diagrammatic panopticism it is evident that Foucault’s bio-political regulation is conducted through spatial and temporal relations which allow for the administration of populations. In then turning to Derrida’s deconstructive juridical thought we can highlight the embedded spatio-temporal connection with regards to the functioning field of deconstruction.

Here it is worth noting Derrida’s acute awareness of the asymmetrical viscosity in Foucault’s *Discipline and Punish*:

... it is a book that deals among other things with the historical transformation of the spectacle, with the organized visibility of punishment, with what I will call, even though this is not Foucault’s expression, the *seeing-punish* [voir-punir], a *seeing-punish* essential to punishment ...¹⁵⁹

However beyond Derrida’s knowledge of *Discipline and Punish* there is perhaps a prevalent connection between deconstruction and bio-politics via the configuration of spatio-temporal relations. In recalling that Foucault’s diagrammatic panopticism enables the functioning of the spatio-temporal power relations necessary for bio-politics we also note that Derrida’s *différance*, which is integral to his deconstructive juridical thought and the asymmetrical viscosity therein, is itself a configuration of space and time. It is simultaneously spatial, to

¹⁵⁸ Sven-Olov Wallenstein, *Biopolitics and the Emergence of Modern Architecture* (New York: Buell Center/ FORuM Project and Princeton Architectural Press, 2009), 32. Note also at 37: ‘the extent to which the older idea of the hospital as laboratory is still at work in the contemporary biopolitical diagram, is the emphasis today on preventive medicine...’. The Deleuze quote is from Deleuze, *Foucault*, 30.

¹⁵⁹ Jacques Derrida, *The Death Penalty: Volume I*, trans. Peggy Kamuf (Chicago and London: The University of Chicago Press, 2014), 43.

differ ('an interval, a distance, *spacing*'), ¹⁶⁰ and temporal, to defer ('a delay, a relay, a reserve ... *temporization*'). ¹⁶¹ Indeed his concept of 'spacing', '*espacement*', is also a metaphysical configuration of space *and* time: '*Spacing* (notice that this word speaks the articulation of space and time, the becoming-space of time and the becoming-time of space) ... '. ¹⁶² These spatio-temporal concepts enable Derrida's hauntology and the asymmetrical visuality which operates at the root of his juridical thought because they instruct the metaphysical critique of presence in time and space:

The disjointure in the very presence of the present, this sort of non-contemporaneity of present time with itself (this radical untimeliness or this anachrony on the basis of which we are trying here to *think the ghost*)...'. ¹⁶³

Consequently it becomes apparent that if deconstruction encompasses a spatio-temporal metaphysical critique and bio-politics operates on diagrammatic 'spatio-temporal multiplicity', ¹⁶⁴ then perhaps there can be shown that *différance* underpins the metaphysical functioning of bio-politics? This connection warrants further development beyond this work but perhaps it would engender the next stage in Malabou's critique of deconstruction's relation to bio-politics.

¹⁶⁰ Derrida, "Différance", 8.

¹⁶¹ *ibid.*

¹⁶² Derrida, *Of Grammatology*, 68.

¹⁶³ Derrida, *Specters of Marx*, 29. All emphasis in the original.

¹⁶⁴ Deleuze, *Foucault*, 30.

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